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HB 790 SUBCOMMITTEE MINUTES

Date: April 24, 2006

Room 102, State Capitol Building

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

SEN. DANIEL MCGEE (Vice Chairman)
SEN. GLENN ROUSH
SEN. MICHAEL WHEAT (Chairman)
REP. NORMA BIXBY
REP. JIM PETERSON
REP. RICK RIPLEY
MR. BRIAN CEBULL
MS. CONNIE IVERSEN
MR. DOUGLAS MCRAE
MR. JOE OWEN
MR. JIM ROGERS
MS. LILA TAYLOR
MR. BRUCE WILLIAMS
MR. DAVE WOODGERD

STAFF PRESENT

JOE KOLMAN, Research Analyst
FONG HOM, Secretary (Transcribed by Cynthia Peterson)

Visitors

Visitors' list ([Attachment 1](#))
Agenda ([Attachment 2](#))

COMMITTEE ACTION

- The Subcommittee changed the reference to "surface user" to "surface owner" in Section 82-1-107, MCA.
- The Subcommittee voted to add a new subsection (3) to Section 82-1-107, MCA, stating that it is the responsibility of the surface owner to provide the surface user, manager, lessee, or other surface user with the name and address of the seismic exploration firm holding a valid permit.
- The Subcommittee amended Section 82-10-503, MCA, to include language requiring the surface owner to be responsible for providing notice to the lessee, surface user, manager, or other appropriate person and to provide them with the name and address of the oil and gas developer or operator. The surface owner would be responsible for forwarding the educational brochure and applicable statutes to the surface user.
- The Subcommittee approved the minutes of the March 16, 2006, meeting.

CALL TO ORDER AND ROLL CALL

00:00:02 Sen. Michael Wheat, Chairman of the HB 790 Subcommittee, called the meeting to order at 8:30 a.m. The secretary noted the roll ([Attachment 3](#)).

PROPOSED BILL DRAFT - Joe Kolman, Research Analyst, EQC

00:01:02 Mr. Kolman provided the Subcommittee with a brief history of the law on Oil and Gas Conservation ([EXHIBIT 1](#)) and provided a news article from Colorado ([EXHIBIT 2](#)). Mr. Kolman reviewed the changes adopted at the last meeting of the HB 790 Subcommittee and submitted proposed bill draft LC 9999 ([EXHIBIT 3](#)). Mr. Kolman noted an error and clarified the effective date of the proposed legislation would be October 2007.

00:11:16 Mr. Cebull requested Mr. Kolman to address the Subcommittee's time lines. Mr. Kolman explained the process and stated final draft legislation and the Subcommittee's report would need to be approved at the May meeting and would then go out for public comment. Public comment will be considered at the July meeting, and a final product will be voted on for presentation to the Environmental Quality Council (EQC).

PUBLIC COMMENT

- 00:13:48 Dave Galt, Executive Director, Montana Petroleum Association, did not believe public testimony indicated there is a problem which would justify the magnitude of the proposed solution. Mr. Galt agreed education was important, but disagreed with the proposed bonding-on process. Mr. Galt pointed out that the greater the delay in the process, the harder it will be for developers to produce oil and gas in Montana. Mr. Galt also disagreed with the proposed penalty section; specifically, he had concerns about the penalty being held for the landowners. Mr. Galt suggested a penalty could be addressed in Chapter 11. Mr. Galt recalled a previous statement by Colby Branch, Crowley Law Firm, where Mr. Branch stated, "If it isn't in the landowner's best interest to make the investment to go to court, why should the state make that investment for them?"
- 00:17:25 Sen. Wheat asked Mr. Galt to identify the better way to address the penalty issue. Mr. Galt suggested connecting Chapter 10 to Chapter 11, which already contains a penalty section. Chairman Wheat asked if the remedy for landowners would be to file an action in court. Mr. Galt clarified there would be a violation penalty and that penalty would go to the state. Mr. Galt explained a violation penalty would be separate from a payment for damages.
- 00:19:53 Patrick Montalban, Northern Montana Oil and Gas Association, agreed with Mr. Galt's comments. Mr. Montalban stated he does not hear the problems that the Subcommittee is hearing. Mr. Montalban agreed the notice requirement should be revised, but believed the Subcommittee was stepping over its boundaries to control the oil and gas industry. Mr. Montalban thought it would be unfair to industry to remove their right to work with the surface owner. Mr. Montalban suggested surface owners should also be included in the bonding process. Mr. Montalban also suggested allowing the surface owner to hire and pay for someone to estimate damages to the land. Mr. Montalban did not believe the Subcommittee understood the rights of mineral owners to develop their minerals. Mr. Montalban disagreed with the bonding provision of the proposed legislation. Mr. Montalban reiterated his belief that the Subcommittee is overstepping its bounds.
- 00:26:36 Chairman Wheat commented he understands the rights of mineral owners and has already heard substantial testimony and did not believe the Subcommittee needs to have another lawyer explain mineral rights. Mr. Montalban suggested an oil and gas attorney would have certain expertise regarding the rights of mineral owners.
- 00:27:24 Julia Page, a member of Northern Plains Resource Council, hoped the bill draft is a work in progress since the Subcommittee has not addressed the concerns that she has been hearing. Ms. Page recalled hearing substantial testimony that there is a need for change for surface owners when developers come on their land. Ms. Page suggested industry is attempting to keep anything from changing because industry currently has a good set up. Ms. Page explained the reason the Subcommittee exists is to listen to landowners, determine whether landowners have a problem, and try to address those issues. Ms. Page believed if an

agreement with surface owners cannot be reached, then there should be a bonding-on provision. Ms. Page thought it was apparent that oil and gas developers had better resources than most landowners to pursue an action in court. Ms. Page voiced her disappointment with way things have gone so far.

DISCUSSION ON BILL DRAFT

00:32:55 Sen. Roush commented he is not trying to take sides on the issue. Sen. Roush read the purpose of HB 790 and pointed out the proposed legislation has nothing to do with coal bed methane (CBM) development in Montana, and is aimed at oil and gas development. Sen. Roush noted the legislation would affect oil and gas producers throughout the state of Montana and emphasized stripper wells do not make a lot of money. Sen. Roush noted the differences between CBM development and oil and gas wells located in different areas of Montana and the increased taxes paid by developers. Sen. Roush agreed the liability should be on both parties. Sen. Roush admitted the bonding requirement may need to be modified, and did not believe more notice was required. Sen. Roush suggested the Subcommittee was going after the wrong people regarding the issues of bonding and annual payments.

(Tape 1; Side B)

00:44:00 Chairman Wheat pointed out the Subcommittee is not addressing water quality issues, and Subcommittee discussions have been focused on new development and split estate issues.

00:45:40 Mr. Williams stated he struggles with the concept of creating a set of regulations and rules for a surface damage bond because it does not seem productive or necessary. Mr. Williams identified the issue as being whether a landowner and operator can reach an agreement on the amount of damage likely to be caused and how the landowner should be compensated. Mr. Williams thought it would be important to make sure operators obey the law and pay surface owners for damages. Mr. Williams did not want to create any more opportunities for contention between the parties.

00:49:52 Mr. Cebull depicted Montana's current statutes as model statutes. Mr. Cebull agreed the current law could use some minor tweaks, but thought the proposed legislation went further than necessary. Mr. Cebull agreed with Mr. Williams and did not see the need for the bonding-on section as it stands. Mr. Cebull pointed out that the current law requires landowners to be compensated, and that the notice period is key. Mr. Cebull stated he did not believe the Montana Board of Oil and Gas Conservation (MBOGC) would want to handle the proposed bonding-on requirement. Mr. Cebull stated he was not pleased with the proposed legislation.

00:52:10 Rep. Bixby suggested language should be added to protect surface owners. Rep. Bixby believed that the split estate issue is important, and the law needs to give more credibility to the landowner. Rep. Bixby stated laws are intended for people who break the law and to protect the rights of people. Rep. Bixby did not like the

bonding-on provision because she believed certain things need to be in place before a company can bond on.

- 00:53:32 Mr. Woodgerd commented a fair assessment of what he has heard is that there needs to be a leveling of the playing field. Mr. Woodgerd thought the bonding-on provision was an attempt to level the playing field. Mr. Woodgerd recalled Mr. Richmond commenting that he may not like the bonding-on provision, but that he does not see an alternative. Mr. Woodgerd did not think the bonding-on process was intrusive and was an attempt to find a middle ground and an alternative. Mr. Woodgerd suggested the comments indicated the current law needs to be tweaked.
- 00:55:41 Rep. Peterson's concern with the bonding-on language was that the whole idea was to address the potential of bad actors. Rep. Peterson's difficulty was that bonding on is meant to address the bad actor, and if a landowner does not like the idea of the minerals being developed, a bad actor could decide not to negotiate for damages if that amount is less than the bond. Chairman Wheat asked if changing the minimum amount to \$500 would address Rep. Peterson's concern. Rep. Peterson noted the statute already requires the developer to pay for damages. The proposed legislation attempts to provide for adequate notice and state an attempt must be made to negotiate. Rep. Peterson did not believe the statute needed to go further. Rep. Peterson suggested penalties should be paid to the state and not the landowner. Rep. Peterson was concerned about adopting a "one-size-fits-all" approach for bonding. Chairman Wheat asked Rep. Peterson if the bonding amount should be set by the MBOGC. Rep. Peterson thought that might be a viable possibility. Rep. Peterson stated his preference would be that the landowner and the mineral owner negotiate, and it would be better if the amount were site-specific rather than a general mandate.
- 01:01:08 Sen. McGee addressed Section 82-10-504(1)(a) and wondered about the meaning of "negotiate." Sen. McGee suggested rewording the sentence to read: "The oil and gas developer or operator and the surface owner are encouraged to reach a verbal or written agreement on damages." Sen. McGee also suggested that Section 82-10-504(1)(c) should refer to "agreement discussions" rather than "negotiate." Sen. McGee also suggested that Section 82-10-504(1)(f) should refer to subsection (1)(a) rather than subsection (1)(b). Sen. McGee addressed bonding on and stated he views the situation as an attempt to balance competing rights, and that he is not willing to give anyone more field than what they are entitled to. Sen. McGee identified two legitimate rights: those of the surface owner and those of the mineral owner to develop his minerals. Sen. McGee suggested there should also be a bonding situation for the landowner if the landowner is impeding the right of the mineral owner.
- 01:05:44 Chairman Wheat stated he preferred that the MBOGC be given more authority and does not care what the bond amount is. Chairman Wheat did not believe the bonding-on option would need to be utilized very often. Mr. Williams stated his company uses surface agreements in CBM development, but utilizes verbal agreements with landowners for the wells in the Baker and Saco areas. Chairman Wheat believed agreements should be in writing between a surface

owner and operator and, if the parties cannot agree, a bond should be set by the MBOGC.

- 01:10:06 Rep. Ripley believed requiring surface agreements and bonding on goes too far. Rep. Ripley did not want government interfering with his business transactions regardless of whether those agreements are made with a handshake. Rep. Ripley cautioned against how far the Subcommittee goes in changing a good law only to end up with something that no one is happy with. Rep. Ripley did not see any reason to make broad-brush changes to a relatively good law.
- 01:12:05 Rep. Bixby noted many individuals do not understand the law and those individuals need protection. Chairman Wheat agreed and added that is the intent of the Subcommittee's proposed educational publication.
- 01:12:48 Mr. Cebull recalled past testimony did not indicate people are not getting payment for damages. Mr. Cebull also believed a brochure and educational product are the most important results the Subcommittee could generate.
- 01:14:15 Mr. McRae felt strongly that the state should be responsible for advocating a written agreement between the parties.
- 01:15:16 Ms. Taylor acknowledged there are bad actors and admitted she is concerned about language such as "shall attempt." Ms. Taylor depicted bonding on as a "double-edged sword." Ms. Taylor was concerned about companies that do not want to negotiate and would rather pay the bond, come onto the land, do what they want, and then leave. Ms. Taylor did not believe the proposed bonding-on provision would hurt the honest developer.
- 01:17:24 Mr. Rogers viewed the proposed legislation as an attempt to balance what the oil industry currently has and what he needs as a surface user. Mr. Rogers suggested the proposed legislation is weak and neither party is getting what they want. Mr. Rogers agreed language such as "shall attempt" is empty. Mr. Rogers pointed out specifying a dollar amount would be wrong if that amount does not float with the market. Mr. Rogers suggested the amount should be tied to the specific production of a well. Mr. Rogers referred to the Model Surface Use and Mineral Development Accommodation Act ([EXHIBIT 4](#)) and the language contained in paragraph 7 that reads: "Both the holders of the surface interests . . . and without liability to the surface owner." Mr. Rogers would like to see that language contained in statute. Chairman Wheat noted the language would also require court intervention before the operator could develop the mineral interest and that could take a long time. Chairman Wheat believed there should be either a written agreement or a written waiver.
- 01:23:08 Rep. Bixby pointed out that the mediation and dispute resolution processes are not as long as going to court. Rep. Bixby suggested those processes should be utilized before a company bonds on.

01:24:03 Mr. Owen believed a written agreement exists in every instance and referred to the original deed which specifies the rights of all parties. Mr. Owen wondered if the Subcommittee would be renegotiating the original agreement.

(Tape 2; Side A)

01:45:17 Chairman Wheat called the meeting back to order.

01:46:06 The Subcommittee addressed Section 82-1-107, MCA, of the proposed legislation. Mr. Kolman explained the draft brochure (**EXHIBIT 5**) and that the brochure is geared toward educating both surface owners and mineral owners. Mr. Cebull thanked Mr. Kolman and stated from a format perspective, he preferred the Bureau of Land Management (BLM) format. Rep. Peterson suggested the brochure should have a different folding pattern and a format that would allow the brochure to be folded and mailed. Chairman Wheat requested Mr. Kolman to change the format and e-mail the revised brochure to the Subcommittee members. Rep. Bixby thought the brochure was informational and suggested the brochure should reference "surface use agreement." Rep. Bixby commented the brochure could be more specific in some areas. Sen. Roush asked about the reference to "An Earth Divided." Mr. Kolman stated the reference was a title only and could be changed. Chairman Wheat asked if anyone had a problem with the photographs. Mr. Cebull believed the pictures could be eliminated to save space and increase content. Chairman Wheat suggested the Subcommittee should review the brochure section by section. Sen. McGee agreed the draft brochure was a good first step.

02:00:11 Sen. McGee moved that the language on page one be offered to the full EQC as an amendment to Section 82-1-107, MCA. Mr. Kolman pointed out the brochure contains items the Subcommittee has already approved. Mr. Kolman identified the issue as whether to utilize the term "surface user" versus "surface owner." Rep. Peterson recalled at the last meeting the subcommittee failed to adopt his motion to change "surface user" to "surface owner." Rep. Peterson stated in practice, the only person of record that can be accessed is the surface owner, and the owner passes the information on to the user. Rep. Peterson believed the surface user would like to know whether anyone has accessed the property to begin mineral development. Ms. Taylor stated she voted against the change because sometimes there is an absentee surface owner, and the lessee does not get notice. Chairman Wheat suggested lessees could provide their name to the MBOGC so they can receive notice from the operators.

Sen. McGee asked Mr. Owen how the problem is currently handled. Mr. Owen explained he goes to County Assessor's records to determine the surface owner, and the surface owner lets him know whether the land is leased. Mr. McRae asked Mr. Owen if he is required to obtain that information, and Mr. Owen explained it is a practical application and the most direct route. Ms. Taylor recalled asking a producer in Sidney if he attempts to find the lessee and was told they do not specifically ask the surface owner whether there is a lessee. Ms. Taylor recalled privacy concerns as being the reason producers did not specifically ask for the information. Mr. Cebull pointed out it is the surface

owner's right to decide whether he will be responsible for the operations or whether he will let the lessee be the responsible party. Mr. Cebull reiterated producers do not have the right to approach the surface lessee unless requested to do so by the surface owner. Chairman Wheat believed the language should reflect "surface owner," but admitted he was sensitive to Ms. Taylor's concerns.

Mr. Rogers recalled past testimony from other land tenants and stated he would support a change to "surface owner" with an inclusion to notify the tenant.

Sen. McGee agreed with Mr. Rogers and suggested the brochure should include a provision that industry will contact the legal surface owner, and the surface owner should inform the developer whether the land is leased. Ultimately, the producer needs to be working with the legal owner.

Rep. Bixby cautioned the brochure needs to provide answers and clarification to everything. Rep. Bixby noted the brochure could be changed at any time, and she believed there needs to be language in the law to protect lessees.

Chairman Wheat asked if it would be difficult to change the brochure to reference "surface owner" and ask whether the surface has been leased and obtain the authority to contact the lessee. Mr. Owen replied there could be numerous surface lessees. Mr. Owen suggested notification language would be appropriately included in the lease between the owner and lessee. Mr. Rogers suggested adding a sentence to subsection (2) that would require the surface owner to notify the tenant or lessee of proposed mineral development. Ms. Taylor clarified she is not trying to get in the owner's business but thought it would be courteous to let the lessee know when someone is going to be conducting activity. Chairman Wheat believed subsection (2) could be expanded to include the tenant. Sen. McGee agreed but suggested adding a new subsection (3) rather than modifying subsection (2).

Mr. Cebull stated he could not support a mandate requiring the surface owner to notify the tenant. Mr. Cebull noted seismic activity is not a single well location, and he does not want to place a burden on the landowner since there could be multiple leases. Mr. Cebull thought good communication could not be legislated. Sen. McGee did not believe landowners are being told they have to do anything; rather, landowners are simply being told it is their responsibility to notify, or not notify, their tenants. Chairman Wheat stated if the language is placed in statute, it can be included in the brochure. Chairman Wheat agreed the language would not put any burden on industry.

Ms. Iversen asked for clarification stating that if the language is in code, but there is no penalty, it is more of a suggestion that this is what landowners need to do. Chairman Wheat explained the language would place a further responsibility on the surface owner to communicate with their lessee.

Sen. McGee moved the reference to "surface user" be changed to "surface owner" in Section 82-1-107, MCA.

Sen. McGee's motion carried by voice vote with Ms. Taylor voting no.

02:27:20 Sen. McGee proposed adding a new subsection (3) that would read: "The surface owner is responsible for providing any surface user or lessee with the name and permanent address of the seismic exploration firm." Mr. Kolman clarified "seismic exploration firm" could just reference "permit holder," and Sen. McGee agreed. Sen. McGee thought the term "manager" should be included, and the language should apply to whoever is in charge of the surface.

02:30:07 Mr. McRae asked if the notification should occur within a specified time frame.

(Tape 2; Side B)

02:30:56 Sen. McGee pointed out there is no penalty in law if the developer does not provide the name and address the seismic exploration firm. Sen. McGee would like the law to reflect that it is the owner's responsibility to provide the name and address and did not want to use the seismic portion of the law to tell a landowner how soon he must notify the lessee. Chairman Wheat stated he understood why Ms. Taylor voted no. Chairman Wheat was concerned the surface user may never be notified. Chairman Wheat stated he would like to see the seismic firm be required to notify not only the surface owner, but also the surface user, if known. Ms. Taylor agreed with Chairman Wheat.

02:34:24 Sen. Roush noted the language on page 2 of subsection (f) and commented the water right is usually conveyed to the surface owner, not the user. Sen. Roush also pointed out a lessee could be more than one person.

02:36:17 Rep. Ripley asked if he is a lessee or surface user if he does not have a written agreement and his business is conducted by a handshake. Chairman Wheat explained there would just be an oral contract and no formal lease. Rep. Ripley would like to clarify it is a responsibility of the surface owner to notify the surface user.

02:37:30 Sen. McGee withdrew his motion and moved that the Subcommittee reconsider the previous motion and return the language from "surface owner" to "surface user" as reflected in current law.

02:39:36 Mr. Woodgerd was concerned about setting up something that cannot be complied with because industry would not have the information it needs. Mr. Woodgerd understood Ms. Taylor's concern, and agreed the surface user would be the most important party to be notified, but as a practical matter, the surface owner is the party that receives notification. Mr. Woodgerd reminded the Subcommittee that Mr. Petesch had indicated a definition for "surface user" would be needed. Chairman Wheat noted that Chapter 1 is existing law and does not contain a definition for "surface user."

02:42:17 Mr. Cebull agreed that producers can determine who the surface owner is and from an obligation standpoint, the Subcommittee should clarify the surface owner, and not the surface user, should be notified. Chairman Wheat believed

the current statute is working well as written. Chairman Wheat suggested the statute was written to refer to the people who are using the surface regardless of whether that person is the owner. Chairman Wheat had concerns about changing the statute, but appreciated the fact that the change would make the statute consistent.

- 02:44:17 Sen. McGee reminded the Subcommittee that it is important that the public be informed, and there are two times when the owner or user are being notified. During those encounters, the brochure should be delivered to enhance education and knowledge. Sen. McGee suggested the initial disturbance would mostly affect the surface user.
- 02:46:51 Mr. Owen commented when seismic takes place, there is generally compensation given for damages and that compensation should go to the owner. Therefore, the owner should be notified rather than the user. Chairman Wheat inquired whether Mr. Owen had been contacting the surface owner rather than the surface user since enactment of the statute. Mr. Owen agreed that was the practice, and the owner would then relay the name(s) of the surface user.
- 02:48:07 Sen. McGee's motion to reconsider failed by roll call vote.
- 02:51:28 Chairman Wheat suggested language should be placed in the statute that the surface user, if known, should also be contacted. Sen. Roush believed it is allowed to sublease surface ground in Montana
- 02:52:27 Mr. Williams believed the language in subsection (2) will mostly likely refer to the surface user, and the intent is that the person the landowner designates is the person with whom the seismic company should deal with.
- 02:53:14 Sen. McGee moved to add a subsection (3) to Section 82-1-107, MCA, stating that it is responsibility of surface owner to provide surface user, manager, lessee, or other surface user with the name and address of the seismic exploration firm holding a valid permit.
- 02:54:25 Mr. Rogers asked if the motion would include adding the language in two places. Sen. McGee explained he would like to address one statute at a time.
- 02:54:49 Sen. McGee's motion carried by voice vote with Mr. Cebull and Ms. Taylor voting no.

Section 2, 82-10-503, Notice of Drilling Operations.

- 02:57:15 Chairman Wheat asked if the underlined language in the exhibit represented language the Subcommittee previously agreed to. Mr. Kolman acknowledged all the underlined language had been previously agreed to by the Subcommittee.
- 02:57:56 Rep. Bixby submitted bill draft LC 9998 (**EXHIBIT 6**). Rep. Bixby explained her amendments seek to level the playing field, which was the whole purpose behind

HB 790. Mr. Kolman explained that Rep. Bixby's draft bill should amend current law or add to current law, and it might not be necessary to reiterate what is already in law. Mr. Kolman suggested that language could go into the Subcommittee's report in its findings and recommendations.

- 03:02:16 Rep. Bixby explained she wanted to make sure the other sections were part of whole process.
- 03:02:50 The Subcommittee addressed Section 82-10-503, MCA, Notice of Drilling Operations, Exhibit 3, and Chairman Wheat pointed out the underlined language represented amendments that were previously approved by the Subcommittee. Ms. Taylor inquired about the last sentence which reads: "The record surface owner and any purchaser under contract for deed may waive the notice requirement." Ms. Taylor recalled the provision applied only to the time requirement and not to the work plan. Sen. McGee explained the sentence applied to drilling operations. Sen. McGee thought it would be appropriate to include language making it the responsibility of the surface owner to notify the surface user.
- 03:06:06 Mr. Kolman suggested language which would read: "The surface owner is responsible to provide notice to the lessee, surface user, manager, or other appropriate person and provide them with the name and address of the oil and gas developer or operator." Sen. McGee moved the language as suggested by Mr. Kolman. Chairman Wheat asked if the notification of the landowner to the surface user would also include the current publication of the brochure. Sen. McGee agreed to amend his motion to include the surface owner forwarding the brochure to the surface user. Sen. McGee wanted to clarify in code that it is responsibility of the surface owner to deal with surface user.
- 03:08:09 Mr. Cebull reiterated the surface owner is legal title holder to the land, and he did not think it was appropriate to become involved in the private agreement between the surface owner and his lessee. Mr. Cebull suggested the legal owner can do whatever he wants with his lessee and did not believe it was appropriate to place the burden on the surface owner to have to notify his lessees unless he chooses to do so. Chairman Wheat explained the intent is to protect the person on the land and keep the person using the land informed. Mr. Cebull added he thought the term "surface user" was too vague and could result in unintended consequences. Sen. McGee explained he is attempting to clarify the potential for confusion. Mr. Cebull believed the current statute is clear that the developer has to notify the surface owner.
- 03:11:54 Mr. Owen requested clarification because Section 82-10-503, MCA, references Title 82, chapter 1, part 1, so Mr. Owen thought the issue was already addressed with the additional language just added to Section 82-1-107, MCA. Sen. McGee believed Section 82-10-503, MCA, was referring to drilling operations and not seismic operations.
- 03:14:21 Sen. McGee's motion carried by voice vote with Mr. Cebull and Ms. Taylor voting no.

(Tape 3; Side A)

- 03:15:34 Mr. Rogers submitted his proposed amendment to Section 82-10-503, MCA, which would require an offer to negotiate an agreement (**EXHIBIT 7**). Mr. Rogers moved that Section 82-10-503, MCA, include language that would read: "This notice must include an offer by the oil and gas developer or operator to enter into negotiations with the surface owner to reach an agreement which reasonably accommodates the surface owner's use of the surface while recognizing the dominance of the mineral estate." Upon question from Chairman Wheat, Mr. Rogers explained he envisioned the language to require negotiations for a site-specific surface use agreement.
- 03:17:40 Mr. Cebull thought the notion of surface agreements should be site specific, but did not believe that this particular statute was the place to have a mandated surface agreement. Mr. Cebull stated he would vote against the proposed amendment. Mr. Rogers believed past testimony indicated the need for negotiation, and that his amendment would provide that opportunity.
- 03:18:49 Mr. Woodgerd asked Mr. Rogers whether he intended the language to require a surface use agreement or just require that the parties discuss a surface use agreement. Mr. Rogers clarified the amendment would require the parties to sit down and negotiate a surface use agreement and provide an opportunity for them to voice their concerns. Chairman Wheat was curious why Mr. Rogers would want to include this language in the section dealing with notice rather than the section dealing with surface damage and disruption payments. Mr. Rogers viewed damages as a different issue and believed the day-to-day activities were different.
- 03:20:08 Mr. Roger's motion failed 7-5 by voice vote with Mr. Cebull, Mr. Owens, Mr. Williams, Sen. McGee, and Rep. Peterson voting in opposition. The motion failed because it did not meet the super majority requirement of the Subcommittee.

LUNCH

- 00:00:02 Chairman Wheat reconvened the meeting at 1:00 p.m.

Section 3. 82-10-504. Surface Damage and Disruption Payments--Dispute Resolution--Penalty for Late Payment

- 00:02:39 Rep. Bixby expressed her concerns and stated she believed a surface use agreement should be required. Rep. Bixby referred the Subcommittee to her proposed amendments to Section 82-10-504, MCA, contained in Exhibit 6. Rep. Bixby believed the specific areas should be listed in code. Chairman Wheat stated his preference would be to have a written agreement or a signed waiver. Chairman Wheat solicited comments about the proposed language to Section 82-10-504, MCA, which says the parties "shall attempt to negotiate."
- 00:05:38 Mr. McRae stated he preferred "good faith" to "shall attempt." Mr. McRae did not like the proposed language. Ms. Taylor thought the language "shall attempt" had

no real meaning and no teeth. Sen. McGee asked if the intent was to overturn what is currently in statute and put the onus on industry to attend to a laundry list of things to do. Sen. McGee wondered what would happen if the oil and gas developer wanted to negotiate but the landowner did not. Chairman Wheat expressed concern about readdressing the issue and wasting time. Rep. Peterson recalled past discussions and stated while this might not be what everyone wanted, it was the best the Subcommittee could come with. Rep. Bixby believed there needs to be a written agreement and that to leave the language as "good faith" or "shall attempt" would be a disservice to landowners.

00:11:07 Mr. Rogers thought "shall negotiate an agreement" was preferable and, when read in context, the language would also apply to the surface owner. Mr. Rogers thought demanding an attempt would not accomplish anything. Mr. Rogers suggested striking the words "attempt to." Sen. McGee observed that Mr. Roger's proposed change would eliminate the need for subsections (c) and (f). Sen. McGee suggested mitigation and court action would no longer be options since negotiation of an agreement would be mandated. Sen. McGee believed there would be times when an agreement could be reached and times when an agreement could not be reached, and Mr. Roger's suggestion only provides one alternative: the parties must agree. Mr. McRae wondered if the act of negotiating results in a conclusion. Mr. McRae suggested mediation or court would still come into play if an agreement could not be reached. Sen. McGee did not believe mediation and court would be options if the language stated the "oil and gas developer or operator and the surface owner shall negotiate an agreement on damages."

00:14:59 Chairman Wheat requested that proposed changes to Section 82-10-504, MCA, be stated in the form of motions so the Subcommittee could vote.

00:15:43 Mr. McRae submitted his proposed amendments (**EXHIBIT 8**) and moved those amendments be adopted. Mr. McRae explained his amendments would require a binding written agreement on damages. In addition the amendment would require the oil and gas developer to minimize damages to the property. Mr. McRae believed his amendment would address landowner concerns heard at previous hearings.

Rep. Bixby believed the proposed amendment would satisfy her concerns. Mr. Williams pointed out that Fidelity drilled approximately 350 wells in Montana in 2005 and approximately half of those wells were drilled with no written agreement other than a signed check. Mr. Williams recalled that industry drilled approximately 3,000 wells in Montana and most of those wells were without the benefit of a written agreement. Mr. Williams thought the amendment would mandate a relationship between two private parties when, in fact, the system works without a written agreement. Mr. Williams struggled with the language mandating the developer to minimize damage to property directly or indirectly related to oil and gas, and stated he would vote against the proposal.

00:20:18 Mr. Rogers asked Mr. Williams whether he believed a binding written agreement on his behalf, rather than an oral agreement, would give him legal footing. Mr.

Williams responded written agreements and handshake agreements with landowners seem to work fine for his company. Mr. Williams did not believe good relationships between neighbors could be mandated.

- 00:24:49 Mr. Rogers spoke about the value of having a written agreement for the future when the original parties to an agreement are no longer involved.
- 00:26:03 Rep. Ripley addressed the issue of damages and did not think the Subcommittee was in a position to know what is best for individual landowners or industry and believed the current system is working. Chairman Wheat responded the system is working, but he supports having written agreements.
- 00:27:22 Mr. McRae responded to Rep. Ripley's comments and recalled the Subcommittee had decided early on that there was a need for better communications. Mr. McRae believed his proposed amendment would encourage better communications. Rep. Peterson thought the original wording that reads "shall attempt an agreement" would be better since the parties could reach an agreement either orally or in writing.
- 00:29:57 Ms. Iversen supported having a written agreement since it would help everyone including the next generation. Ms. Iversen pointed out the amendment does not dictate the terms of the agreement.
- 00:30:54 Mr. Cebull did not recall anyone in previous testimony saying they could not get a written agreement when they wanted one. Mr. Cebull suggested the controversy is in the terms of any agreement. Mr. Cebull suggested leaving the form of agreements open and thought it was unnecessary to mandate a written agreement.
- 00:31:43 Sen. McGee asked Mr. McRae if he envisioned a penalty section if the oil and gas operator does not attempt to negotiate a binding written agreement. Mr. McRae did not envision a penalty and stated the state has an obligation to encourage citizens to have written agreements because of the legal consequences of not having a written agreement. Sen. McGee asked if Mr. McRae would support including a penalty section if the landowner chose not to attempt to enter a written agreement. Sen. McGee proposed language stating the oil and gas developer or operator and the surface owner are encouraged to reach a verbal or written agreement on damages. Sen. McGee thought use of "shall attempt" would not be very useful if there was no penalty involved. Sen. McGee asked if this language would address Mr. McRae's concerns. Mr. McRae stated he prefers "are encouraged" to "shall attempt," but would like to see the state be an advocate for a written agreement.
- 00:37:01 Sen. McGee stated the brochure will make information available and the law will be sent twice, once for the seismic activity and once for development. Sen. McGee suggested if the brochure says the parties are encouraged to have a written or oral agreement, it would address the issue without using words that do not mean anything in light of the fact there is no penalty.

(Tape 3; Side B)

- 00:37:49 Chairman Wheat thought requiring negotiation for a binding written agreement on damages would take care of the proposed subsection (3). Chairman Wheat believed two parties working in good faith could work out the terms of their agreement without the terms being mandated.
- 00:39:56 Rep. Bixby suggested requiring a dispute resolution process or mediation in the event an agreement cannot be reached.
- 00:41:27 Mr. McRae's motion to amend Section 82-10-504, MCA, failed 6-6 by voice vote.
- 00:41:55 Ms. Iversen moved to amend Section 82-10-504(c) and submitted her proposed amendment (**EXHIBIT 9**). Chairman Wheat pointed out Ms. Iversen's proposed amendment would actually strike subsection (d) since the Subcommittee had added a completely new subsection (c). Mr. Kolman and Ms. Iversen agreed.
- 00:43:17 Mr. Cebull noted a surface owner currently may elect to receive annual damage payments, and Ms. Iversen's amendment would require annual damage payments. Mr. Cebull wondered what would happen if the surface owner preferred lump sum damage payments. Ms. Iversen pointed out that the surface owner and oil and gas operator could agree on another method of payment. Ms. Iversen also pointed out that some surface owners would prefer to have a lump sum payment for the initial damages and then receive annual payments for the life of the well. Ms. Iversen also thought yearly checks would result in oil and gas developers being able to keep better track of their wells. Mr. Cebull commented he did not see the sense in changing the current language since surface owners are already entitled to receive annual damage payments. Ms. Iversen disagreed and suggested there are different interpretations of the statute. Ms. Iversen stated her proposed amendment is an attempt to clarify the law.
- 00:47:00 Mr. McRae thought he heard enough testimony in Sidney and Havre that certain companies have broadly interpreted "exploration" and believed the proposed amendment would provide clarification. Ms. Taylor agreed that some people were receiving annual payments and did not believe the practice was consistent. Ms. Taylor supported the proposed amendment. Mr. Owen thought mandating annual damage payments would result in a significantly less initial payment. Mr. Owen suggested the one-time payment practice was done to reduce administrative paperwork.
- 00:49:04 Ms. Iversen disagreed and stated annual damage payments are being paid and have not resulted in reduced up-front payments. Mr. McRae suggested a surface owner has no way of knowing how long an operator will occupy the land, so it is difficult to come up with a dollar value at the onset.
- 00:50:26 Ms. Iversen's motion to amend Section 82-10-504, MCA, failed by voice vote with Mr. Cebull, Sen. McGee, Mr. Williams, Rep. Peterson, and Mr. Owen voting no.

Section 5. Requirements for Surface Bonds--Rulemaking Authority-- Appeals

- 00:52:10 Mr. Kolman reviewed the new Section 5 and explained the new section contained provisions already adopted by the Subcommittee. Sen. McGee added the idea was to put in code a range in value, so the MBOGC could make its determination within the preset range.
- 00:53:26 Mr. Rogers thought without having required written agreements and surface damage agreements, he does not see a need for oil and gas developers to pay their way onto the land. Chairman Wheat agreed that oil and gas developers are only required to attempt to negotiate an agreement.
- 00:55:17 Mr. Woodgerd thought the bonding-on process would come about when there are ongoing disagreements about the amount of damages. Mr. Woodgerd recalled testimony that there are ongoing disagreements on damages and believed the bonding-on provision would require oil and gas developers to put up a bond for the amount of damages. Mr. Woodgerd thought the provision would even out negotiations.
- 00:56:49 Mr. Owen stated he could not grasp how the section would work mechanically and had a number of questions. Mr. Owen noted the language did not contain an exit strategy.
- 00:58:22 Mr. Cebull agreed with Mr. Rogers and did not believe there was a need for a bonding-on process. Rep. Peterson requested comments on the proposed section from Mr. Richmond. Chairman Wheat pointed out he believed the bonding-on provision could work mechanically under Section 82-10-504, MCA, since the oil and gas developer is making a determination as to the amount of damages. Mr. Owen stated, in most cases, oil and gas developers pay multiples of actual damages as a way to move the process forward in a timely manner.
- 01:00:57 Tom Richmond, Administrator and Petroleum Engineer, Montana Board of Oil and Gas Conservation, did not like bonding on because it could be the first alternative chosen instead of the last. Mr. Richmond was not comfortable setting the amount of the bond. Mr. Richmond requested that the MBOGC be allowed to gather confidential information to set the bond amount. Mr. Richmond wondered how often the bonding-on provision would be used and how large of a burden it would be for the MBOGC. Mr. Richmond liked the idea of having sideboards by setting minimum and maximum bonds. Mr. Richmond stated once a bond is posted, the operator would be able to enter the land, and there would not be a time process involved.
- 01:05:48 Ms. Taylor inquired whether the MBOGC would be able to make the determination that a company is a bad actor if the MBOGC started to see a pattern of non-compliance. Mr. Richmond agreed that could be a trigger that would result in further investigation.

- 01:07:07 Rep. Peterson asked how the MBOGC would ensure that the bonding-on provision would not become a defacto minimum and a first avenue to getting onto land. Mr. Richmond suggested rulemaking could provide for a way to determine what damages have been paid in the past in a particular area. Mr. Richmond had strong feelings about setting a maximum for bonding on.
- 01:08:21 Mr. Owen explained past damages paid were generally premiums to make things go easier and did not have much to do with actual damage to the ground. Mr. Richmond did not disagree and stated the determination would have to be objective and somewhat arbitrary.
- 01:10:50 Rep. Bixby wondered what the protection would be to the landowner to keep a company off his land if there is no agreement. Chairman Wheat directed Rep. Bixby to subsection (2) that says if there is no agreement, the oil and gas developer may present evidence to the Board and request a bond amount be set. Rep. Bixby suggested there should be a specific amount for the bond set in statute.
- 01:13:11 Mr. Owen was concerned about the amount of bureaucracy which would need to be created to administer the bonding-on provision.
- 01:13:58 Chairman Wheat asked Mr. Richmond for his opinion about how many instances would occur where bonding on would be required. Mr. Richmond was aware of only a handful of cases where people have gone onto land to do business without having made arrangements.
- 01:15:49 Chairman Wheat asked Jim Albano, Lead Mineral Resource Specialist, Bureau of Land Management (BLM), about the federal experiences with bonding on. Mr. Albano stated the BLM has a total of 16 bonds that they processed in the Montana organization, which includes Montana, North Dakota, and South Dakota. Mr. Albano explained the policy changed in 2003, and the policy then required a separate bond for the benefit of the surface owner.
- 01:18:53 Mr. Cebull asked Mr. Albano to speak about the process of bonding on, how the bond amount is determined, and how the bond would be used to pay surface owner damages. Mr. Albano responded laws and regulations seldom provide for the process that needs to be undertaken to implement a program. Mr. Albano explained the paperwork involved in the bonding-on process, and stated they have a specialist on the ground who visits well sites.

(Tape 4; Side A)

- Mr. Albano further explained BLM's bonding on process and noted a landowner has thirty days to object to the amount of the bond. If the landowner objects, a court determines the appropriate bond amount. Damage payments must be made before the bond is released.
- 01:27:10 Ms. Taylor asked how BLM gets notice that negotiations have broken down. Mr. Albano replied the operator would most probably give notice, but added the BLM

field operator is also involved. Chairman Wheat asked if the parties have to have a written agreement. Mr. Albano explained there could be a written agreement, signed waiver, or an agreement for damages, although the agreement for damages does not have specific signed language tied to it.

01:29:09 Ms. Iversen asked what the bond amounts were for cases where the operator bonded on. Mr. Albano replied in all cases the bond was \$10,000, but it was made clear that amount did not represent the value of the damages.

01:30:07 Chairman Wheat informed the Subcommittee that he would like to vote on Section 5 in its entirety, and if the whole concept is voted down, the Subcommittee would not need to deal with the details.

01:31:22 Rep. Bixby recalled the Subcommittee previously approved a bonding on provision and did not believe the Subcommittee should re-vote on the issue. Chairman Wheat explained this is the first time the Subcommittee has seen the proposed language and the specific language needed to be voted on. If the Subcommittee adopts Section 5, the Subcommittee could then make amendments to the language. Sen. McGee recalled past discussions that bonding on was a way to address bad actors. Sen. McGee also recalled discussing the potential for an award of attorneys fees to landowners who take an operator to court and prevail.

Sen. McGee moved the Subcommittee adopt Section 5. Sen. McGee explained his goal was to balance the competing rights of the parties, and that he believed there are not many instances where an agreement cannot be reached. Sen. McGee hoped the bonding-on process would address instances where people cannot reach an agreement. The bonding-on process would allow the money to be held in abeyance, so if there are damages, the money could be used to address damages.

01:35:23 Mr. Cebull did not believe Section 5 was needed and believed disputes rarely occur. Mr. Cebull suggested Section 5 would create additional bureaucracy and an unnecessary rulemaking process. Sen. McGee's motion to adopt Section 5 failed by voice vote with Mr. Woodgerd, Rep. Bixby, Sen. Wheat, and Sen. McGee voting aye.

BREAK

SECTION 6. Penalty for Notice Violation

01:54:56 Mr. Owen read the section to not only be an issue of timing, but also adequacy of notice and other parts of notice. Mr. Owen was particularly disturbed by the requirement that the fine would go to the landowner rather than the state. Mr. Owen suggested giving the penalty to the landowner would give the landowner an incentive to be difficult. Chairman Wheat agreed the fine should go to the state.

- 01:57:02 Mr. Williams agreed with Mr. Owen and had concerns about what would constitute a violation and thought the issue should be clearly stated. Mr. Williams also agreed the fine should not be passed to the landowner. Chairman Wheat explained his thought was that the fine would apply to an operator who comes onto property without any notice. Chairman Wheat explained the penalty was meant for an operator who ignores the law. Mr. Cebull directed the Subcommittee to page 26 of the minutes of the last meeting and wondered if Section 6 was necessary.
- 01:59:48 Mr. Woodgerd recalled that he had concerns the last time the issue was raised because the penalties were too high. Mr. Woodgerd also recalled concern about the complexity of cross-referencing the chapters with other sections. Mr. Woodgerd agreed paying the surface owner a penalty would not be good policy. Mr. Woodgerd also thought the penalty should only be for failure to provide notice. Chairman Wheat thought the proposed penalty sections were harsh. Mr. Cebull asked Mr. Richmond whether violations were ever brought before the MBOGC and how the penalty amount is determined. Mr. Richmond explained most of the penalties in the statute were designed to deal with environmental penalties. Mr. Richmond believed the MBOGC would set the penalty at the low-end rather than the high-end.
- 02:05:11 Chairman Wheat was concerned about what happens when the operator does not give notice to the landowner, goes on the land, and commences operations. Rep. Bixby asked if the penalties would also apply when a developer violates the terms of an agreement. Chairman Wheat explained that Section 6 was designed to address operators who fail to give notice. Rep. Bixby inquired what would protect landowners if a written surface use agreement is violated. Chairman Wheat identified the judicial system as the last resort for a landowner. Ms. Iversen believed violations occur more frequently than realized since there is no penalty. Rep. Bixby suggested violations are sometimes reported to the MBOGC and nothing happens and suggested the MBOGC should report back to the landowner that a violation has occurred.
- 02:08:13 Sen. McGee read Section 82-11-147, MCA, and pointed out the language only applied to part 147. Mr. Richmond agreed and stated the MBOGC would not have rulemaking authority under chapter 10. Sen. McGee stated there is no penalty section for notice and did not believe the \$75 to \$10,000 penalty in chapter 11 would apply to chapter 10. Chairman Wheat suggested the statute could be amended so the penalty would apply in chapter 11. Sen. McGee did not believe Section 82-11-147, MCA, would cover Title 83, chapter 10.
- 02:11:32 Chairman Wheat believed violators who knowingly violate the law need more than a slap on the hand, and their permit to drill should be revoked until the situation is remedied.
- 02:13:06 Mr. Cebull commented that he believed the Subcommittee was in agreement that there should be a penalty for violating the time portion of the notice provision. Mr. Cebull pointed out that honest mistakes could be made and pulling a drilling permit could result in severe economic damages to a company. Chairman Wheat

clarified he was referring to intentional violations of the law. Mr. Woodgerd commented about the difficulty in proving intent, and the resulting difficulty in administering the law. Mr. Woodgerd thought there could be strict liability without a substantial penalty, unless it can be proved there was intent on the part of the producer.

- 02:15:36 Mr. Rogers stated the Subcommittee has an opportunity to penalize violators and suggested the language could be changed so the fine is payable to the state. In addition, Mr. Rogers suggested the fine could be incremental for multiple offenses.
- 02:17:06 Sen. McGee suggested amending the language to reflect daily penalties of \$100 for a minimum and a maximum amount of \$500, and deleting subsection (4) in its entirety.
- 02:18:09 Ms. Taylor asked Mr. Richmond how he handles telephone calls from landowners and how the information is noted. Mr. Richmond explained the chief field inspector keeps a log and deals with the complaint. If the complaint cannot be resolved, Mr. Richmond will take the complaint to the board. Mr. Richmond wondered what the penalties were for trespass and wondered if drilling without notice would be considered trespass. Ms. Taylor asked if there was a field inspector in Sidney. Mr. Richmond stated there are field inspectors residing in Glendive and Plentywood, and the Billings office also has the ability to contact field inspectors within 24 hours.
- 02:21:05 Mr. Cebull suggested researching trespass laws and related penalties and fines.
- 02:21:45 Ms. Iversen commented she did not want to rely on trespass laws since most people would not report trespass on their friends and neighbors.
- 02:22:13 Chairman Wheat repeated the minimum and maximum amounts suggested by Sen. McGee, but was not supportive of the fines being assessed daily. Chairman Wheat agreed Section 4 should be deleted.

(Tape 4; Side B)

- 02:23:12 Ms. Taylor questioned a \$100 fine and thought operators would not bother noticing if the fine were only \$100. Ms. Taylor emphasized the whole point of the penalty is not for people who are going to follow the drilling process correctly; rather, the fine is for operators who do not follow the correct process.
- 02:24:18 Ms. Iversen reminded the Subcommittee that in most cases the notice is not for a drill site but is for surveying. Therefore, there is plenty of time to notice the surface owner.
- 02:25:34 Chairman Wheat asked Ms. Taylor for a suggestion on what fine should be. Ms. Taylor did not suggest a specific amount. Sen. McGee pointed out the minimum \$100 fine is assessed daily. Ms. Taylor still thought the \$100 fine would be a drop in the bucket. Sen. McGee reminded Ms. Taylor that mineral owners have a right

to develop their minerals. Ms. Taylor agreed, but reiterated that surface owners also have a right to know when a developer is coming onto their land.

- 02:27:32 Chairman Wheat suggested the Subcommittee was probably in agreement that subsection (4) should be removed. Chairman Wheat restated Sen. McGee's suggestion that the penalty have a minimum of \$100 and a maximum penalty of \$500 until the notice requirement is fulfilled. Mr. Cebull requested clarification of what would constitute "fulfilling the notice requirement." Chairman Wheat agreed it is not clear. Ms. Taylor suggested if the developer gave notice properly, the landowner would have twenty days. If a developer comes on the land without notice, the landowner should still have twenty days. Chairman Wheat said if there is no notice, there is no agreement, so the operator and surface owner should have to come to an agreement on damages. Mr. Cebull stated it would be economically difficult, and technologically difficult, if not impossible, to stop any drilling operation. Chairman Wheat asked Mr. Cebull how to deal with the landowner that was not given the required notice. Mr. Cebull referred to the penalty phase, and the fact that the existing statute states the surface owner will be compensated for damages.
- 02:31:31 Sen. McGee asked Mr. Cebull for his suggestion on what the penalty should be for bad actors who violate the notice provision. Mr. Cebull thought a monetary penalty for violation of notice is a good idea. Mr. Cebull did not agree with going beyond a monetary fine for violating the timing provision of notice. Sen. McGee asked again what the penalty should be to an offending company. Mr. Cebull thought the penalty should be significant enough to register. Mr. Cebull thought the range of \$100 to \$500 would be a reasonable penalty. Sen. McGee asked if the penalty should be assessed daily, and Mr. Cebull replied he did not believe a daily penalty, depending upon how daily is defined, would be unreasonable for violating a law. Sen. McGee asked for a suggestion on what a one-time fine should be. Mr. Cebull was hesitant to provide a number, but agreed the ability to have a range for the fine would be important.
- 02:35:10 Mr. Owen asked the Subcommittee to keep in mind that the typical situation where there would be a violation of the 20-day notice rule would be a surveying situation where there would not be a lot of physical damage. Mr. Owen thought someone who comes in and drills a well without notice should be heavily penalized. Mr. Owen suggested the Subcommittee should keep in mind that the two situations are completely different.
- 02:36:15 Chairman Wheat suggested plugging in a \$100 minimum penalty and a \$500 maximum penalty and removing subsection (4).
- 02:36:58 Mr. Cebull suggested the first sentence in Section 6 should be clarified to refer to the timing of the notice and the notice provisions. Chairman Wheat asked the Subcommittee members to inform Mr. Kolman of any proposed language changes.
- 02:38:26 Mr. Kolman requested more specific direction from the Subcommittee about proposed changes.

- 02:38:57 Mr. Williams suggested the first sentence could read: "A surface owner may present evidence of failure to provide notice under Section 82-10-503, MCA, to the board of oil and gas conservation . . ." Sen. McGee pointed out "pursuant to" would be better language than "under." Mr. Cebull asked Mr. Williams if his proposed language would clarify the issue of notice content versus notice timing. Mr. Williams believed it would and stated it is not a timing issue, but rather a failure to provide any notice.
- 02:40:30 Ms. Taylor asked whether the language "within 30 days of the board's order" had been removed from subsection (2). Chairman Wheat clarified that language was still in subsection (2).
- 02:41:03 Mr. Richmond suggested subsections (3), (4), (5), and (6) could be deleted. Chairman Wheat agreed and stated the MBOGC already has procedures in place that deal with fines.
- 02:42:46 Ms. Iverson suggested the penalty amounts should be set at a minimum of \$200 and a maximum of \$500.
- 02:43:08 Sen. McGee moved to include as Section 6, the penalty section "A surface owner may present evidence of failure to provide notice pursuant to 82-10-503 and that the penalty amount be a daily fine of \$200 for the minimum, and \$500 for the maximum until requirement is fulfilled . . ." Sen. McGee's motion included striking the language "on behalf of surface owner" and keeping in the language "within 30 days of the board's order."
- 02:45:40 Mr. Cebull asked about clarifying "until the notice requirement is fulfilled." Sen. McGee agreed and made that clarification a caveat to his motion. Mr. Cebull stated he was still confused what the time frame would be for assessing a daily penalty. Sen. McGee suggested the fine should possibly be a one-time fine rather than daily. Chairman Wheat suggested the language refers to the things that need to be done after notice is given. Chairman Wheat agreed "until the notice requirement is fulfilled" is not the correct language.
- 02:48:08 Mr. Woodgerd stated he understands the concept and stated if one of the requirements is that an agreement on damages be reached, and the fine keeps running until an agreement is reached, that would be a good incentive for a landowner to never reach an agreement on damages. Mr. Woodgerd suggested substituting "until the notice is provided."
- 02:49:13 Ms. Taylor suggested the bad actors would simply pay a fine of \$200 when he hands over the notice he is going to drill.
- 02:49:51 Mr. Richmond thought the presence of a drilling rig would be a good notice, so the penalty would be 20 days' worth of violation. Mr. Richmond thought the penalty for 20 days' worth of violation should be stated as the maximum penalty. Mr. Richmond thought it was important for the statute to be self-executing, so the MBOGC knows exactly what to do when a violation occurs.

- 02:50:50 Rep. Peterson noted failure to give notice would trigger a penalty, but should not void the 20-day notice requirement. Rep. Peterson believed the 20-day notice requirement should still be applied to allow the process to work as outlined in the statute.
- 02:52:03 Chairman Wheat agreed and referred to Mr. Woodgerd's suggested language "until the notice requirement is provided."
- 02:52:53 Ms. Taylor reminded the Subcommittee that they are not attempting to penalize those producers who do it right, but to go after those who are doing it wrong.
- 02:53:37 Sen. McGee suggested language reading: "If the board finds that a violation of 82-10-503 has occurred, the board may assess a fine of \$2,000, plus \$500 a day until the notice is provided." Sen. McGee stated he did not like the language proposed in his motion and withdrew his motion.
- 02:56:05 Rep. Peterson agreed and thought a violation of notice should have a specific date attached to the violation, as well as a fine. Rep. Peterson did not believe a violation should void the 20-day requirement. Chairman Wheat agreed and said the issue is not just notice but educated notice.
- 02:58:18 Mr. Owen suggested the Subcommittee should keep in mind the component of surface disturbing activities versus a survey violation. Mr. Owen would like to keep the two issues separate and distinct and have the violation amounts adjusted accordingly. Ms. Iversen stated she did not believe the two issues could be kept separate.
- 02:59:41 Chairman Wheat asked Mr. Kolman to draft language based on the comments for consideration at the next meeting.
- 03:00:51 Chairman Wheat informed the Subcommittee the next meeting will be May 18, 2006. At that time, the Subcommittee will review the bill draft and discuss Section 6. Chairman Wheat thanked the Subcommittee for their hard work.

(Tape 5; Side A)

DRAFT REPORT

- 03:02:10 Mr. Kolman reviewed his report entitled, "Split Estates--The Relationship between Surface and Minerals" (**EXHIBIT 10**). Mr. Kolman requested input and guidance on the draft Subcommittee Findings and Recommendations.
- 03:08:02 Mr. Rogers inquired about the back side of the third page, and pointed out that the Subcommittee eliminated bonding requirements based on the type of activity. Mr. Kolman stated he would change the finding to reflect the Subcommittee's determination. Ms. Taylor suggested the finding should reflect the Subcommittee's substantial consideration of bonding on. Chairman Wheat suggested Mr. Kolman go through the record from previous meetings to determine what the Subcommittee's findings were. Chairman Wheat requested

the Subcommittee members to review the report and be prepared to finalize the report at the next meeting.

- 03:10:40 Mr. Kolman agreed that could be done, but was concerned the Subcommittee members would not have a chance to review and discuss the final report before the report goes out for public comment. Rep. Peterson suggested the minutes and final bill draft contain all the Subcommittee's decisions and the discussion that resulted in those decisions. Rep. Peterson wondered if the statute requires a Subcommittee report be given to the Legislature. Mr. Kolman explained the Subcommittee was required by HB 790 to report to the Legislature. Rep. Peterson wondered if the Subcommittee's draft recommendation to change the statute would satisfy the requirement of HB 790. Mr. Kolman pointed out that the draft legislation would not specifically address coal bed methane exploration, and that was one of the items mandated by HB 790.
- 03:13:35 Chairman Wheat stated the Subcommittee had numerous public hearings and gathered as much information as it could in the time allotted and money provided. Chairman Wheat did not believe the Subcommittee had enough time to write a final report, and the Subcommittee's actions are supported by the minutes of the meetings. Chairman Wheat suggested the Subcommittee members should read the report and give it some thought, and be prepared to discuss the report at its next meeting.
- 03:14:33 Mr. Woodgerd suggested it would be better for the Subcommittee to respond to proposed language rather than write the language. Mr. Kolman agreed to draft proposed language, but clarified the language would not be his opinions, and the Subcommittee would be free to change or adopt the findings. Chairman Wheat understood Mr. Kolman's concern and asked Mr. Kolman to draft language in an objective manner. Rep. Peterson did not believe the report needed to be extremely lengthy and should show what the Subcommittee addressed, the conclusions reached by the Subcommittee. Rep. Peterson believed the minutes would indicate the thought process behind the decisions. Chairman Wheat asked the Subcommittee members to make certain that they read the findings and recommendations and be prepared to comment at the next meeting. Chairman Wheat thanked Mr. Kolman for all the work he has done.
- 03:18:59 Mr. Kolman asked for additional comments on the brochure. Ms. Iversen asked if "Key Contacts" could include groups such as the Havre Land Mineral Association and Northeast Montana Mineral Association. Mr. Kolman agreed to add mineral owner groups. Mr. Owen noted the statement in the brochure stating if the deed says ownership of the property is in fee simple absolute, it means the surface and mineral rights are intact. Mr. Owen thought that statement may not always be true because a deed may have language stating "subject to any previous reservations in the chain of title." Mr. Owen suggested language should mention the chain of title and any reservations in that chain of title. In addition, Mr. Owen also pointed out Montana law allows for a co-tenancy that would allow for the development of minerals.

- 03:22:41 Chairman Wheat suggested the brochure should indicate this is a complicated area of the law and that they should seek more specific advice. Ms. Taylor noted many people who need information would not be able to access a website. Mr. Owen commented the paragraph on "Who can do what" was well written and informative. In addressing the section "What is the drilling notice," Mr. Owen thought the conditions of access language was too broad and could imply that someone could include conditions that are unreasonable. Chairman Wheat also noted the 10- and 90-day requirement was changed to 20 and 180 days. Mr. Kolman acknowledged the brochure would need to evolve with the law. Mr. Owen pointed out the brochure mentions surface and disruption payments, but does not mention damages. Mr. Owen stated developers do not pay to use property, but rather pay for damages that occur as a result of that use. Mr. Owen suggested adding the language contained in 82-10-504(d) (now 82-10-504(e)). Chairman Wheat pointed out that landowners would receive a copy of the statutes, as well as the brochure. Mr. Kolman agreed to make the revisions and submit the brochure to Subcommittee members for comment at the next meeting.
- 03:27:33 Rep. Peterson suggested the title "A Guide to Split Estates in Oil and Gas Development" would be a good title for the brochure. Mr. Woodgerd wondered if it would be helpful to include information stating what happens if there is no agreement, i.e. mediation or court.

APPROVAL OF MARCH 16, 2006, MINUTES

- 03:29:04 Rep. Peterson moved to approve the March 16, 2006, minutes. The motion carried unanimously by voice vote.

ADJOURN

- 03:30:02 Chairman Wheat adjourned the meeting at 4:30 p.m.